



## CHAPTER 2

### CONTRACTUAL ELEMENTS OF THE PROPERTY ADMINISTRATION PROCESS

#### A. INTRODUCTION

1. PAs have a variety of responsibilities to ensure that Government property in the possession of Government contractors is properly managed. The most critical and basic of these responsibilities is the administration of specific contract provisions relating to Government property. Most other responsibilities, including property system analyses, are intended to support this primary responsibility.

2. PAs are responsible for having a thorough understanding of all contract provisions pertaining to Government property. These include:

a. The contract clauses in FAR 52.245 and DFARS 252.245, and other applicable clauses, as well as any special contract provisions.

b. The requirements of FAR Part 45, DFARS 245, and as supplemented by agency-unique regulations.

3. The PA is responsible for the enforcement of those provisions in the FAR, DFARS, and agency supplements that are binding upon the contractor either through incorporation by reference of an appropriate Government property clause, or by direct incorporation in the contract.

4. The Government property clauses at FAR 52.245-2, 52.245-5, and other clauses in FAR 52.245, are the most important for PAs to understand and properly administer. They establish the title, property control, risk of loss, and disposition provisions that generally apply to all Government property. Clauses, such as FAR 52.232-16, 52.249-2, 52.249-6, 52.252-1, etc., may impact the control of other property accountable to Government contracts at various times. The PA shall be familiar with the implications of these clauses and their application where appropriate.

5. PAs must be similarly familiar with special contract requirements relating to Government property. These include the amount of authorized Government-furnished property (GFP), contractor acquired property (CAP) specified as a line item, authorized use of Military Standard Requisitioning and Issue Procedures (MILSTRIP) for ordering Government property, warranty provisions, and other special provisions.

## B. INITIATION OF PROPERTY ADMINISTRATION



1. Control of Assignments. The Contract Administration Office (CAO) shall establish and maintain a Contract Assignment Control Register, or automated equivalent, for each contractor, showing:

- a. Contractor's name and address.
- b. Procurement instrument identification (PII)(contract) number.
- c. Type of contract.
- d. Name of the assigned PA and date of assignment.
- e. Date of completion or recision of the contract, or reassignment of the PA.

2. Contract Review. The PA shall review each contract providing for Government property to estimate the property administration effort that must be applied. The analysis shall be sufficient to determine the types and amounts of Government property to be provided, the administrative effort required, and the management controls necessary for ensuring compliance with contract requirements and development of an appropriate property management plan.

### 3. Establishment of Contract Property Control Data Files

a. A Property Summary Data Record shall be established by the PA containing as a minimum the following information:

- (1) Contractor's name and address.
- (2) Contract number.
- (3) Type of contract and applicable property clauses, including special or nonstandard clauses, pertaining to Government property.
- (4) Date of final review and date of execution and transmittal of the DD Form 1593, "Contract Administration Completion Record, " or automated equivalent.
- (5) Supporting property administration assignments.
- (6) Name(s) of the PA(s).

b. The PA shall establish a Contract Property Control Data File that shall include as a minimum:

(1) Property Summary Data Record

(2) Copy of the contractor extract of provisions thereof pertinent to property administration, including modification(s) and change orders, relating to Government property, and comparable data regarding any subcontracts involving Government property.

(3) Record of property system analyses performed, deficiencies disclosed, and corrective actions taken.

(4) Record of final review and execution of the PA's statement of closure of the contract property account.

(5) Other pertinent correspondence and documents, including, as applicable, inventory adjustments, investigations, recommendations, and liability determinations.

(6) Records concerning supporting property administration delegations, assist actions involving special reviews, and other applicable reviews at subcontractor plants.

(7) Records of inspection and audits pertaining to the pertinent contract that are performed by other activities.

(8) Reports relating to Government property prepared by the contractor pursuant to the contracts.

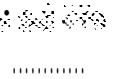
c. When a contractor is performing multiple Government contracts, records and other data relating to more than one contract shall be maintained in a general property management file for the contractor.

d. In instances where an improper clause pertaining to Government property is incorporated within the contract, or the appropriate Government property clause is omitted, action shall be taken to resolve the matter with the CO; e.g., issue a "Contract Data Package Recommendation/ Deficiency Report" (DD Form 1716) or letter.

e. Property reported to have been received by the contractor without contractual coverage shall be documented in a suspense file by the PA, pending investigation and resolution.

f. When the PA determines that property is accountable to a contract but property administration has not been delegated, the PA shall determine if contract administration has been delegated. If contract administration has been delegated, the PA shall initiate property administration and establish a Property Control Data File, unless

specifically excluded by the CAO delegation. Where contract administration has not been delegated, the PA shall coordinate with the CO for resolution.



**C. ADMINISTRATION OF PROPERTY RELATED CONTRACT PROVISIONS.** The PA is directed to FAR 45.106 for discussion on the use of the various Government property clauses. The text of these clauses is found in FAR 52.245 and the corresponding DFARS. It is imperative that PAs become familiar, knowledgeable and conversant with these clauses and their application.

**D. TITLE TO GOVERNMENT PROPERTY**

**1. Material**

a. Title to all material furnished by the Government remains with the Government. —

b. Title to material acquired by the contractor is governed by various contract clauses. The title provisions of FAR 52.245-5 contain two provisions about passage of title of materials to the Government for contractor-acquired materials on cost-reimbursement type contracts.

(1) When material is purchased by the contractor, the cost of which is reimbursed as a direct item of cost under the contract, title passes to and vests in the Government on delivery of such material by the vendor.

(2) Title to other material, the cost of which is reimbursable to the contractor, shall pass to and vest in the Government upon:

(a) issuance of the property for use in contract performance,

(b) commencement of processing of the property or use in contract performance, or

(c) reimbursement of the cost of the property by the Government, whichever occurs first.

(3) The title provisions of FAR 52.245-2 provide that the Government may similarly take title to materials acquired on fixed-price contracts, but only if the contract contains specific provisions for the Government to reimburse the contractor for materials as a direct item” of cost under the contract.

**2. Agency-Peculiar Property.** APP is generally Government furnished where title remains with the Government.



3. Special Test Equipment (STE). Acquisition of STE under cost-type contracts. The Government acquires title to all STE purchased or fabricated by the contractor because this acquisition is reimbursable to the contractor. The title to STE shall vest with the Government at the time of acquisition or acceptance according to Government property clauses (52.245 -2/5) and STE 'clause (52.245-18).

4. Special Tooling. The following are methods by which title to special tooling may be acquired and the differences in contractual requirements that apply to each method of acquisition:

a. Special tooling that is provided as GFP, acquired or manufactured by the contractor under a cost-type contract or acquired for the Government as a line item under a fixed-price contract, is Government property. This special tooling is subject to the provisions of the applicable Government property clauses.

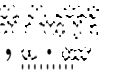
b. The Government may reserve the right to take title to other special tooling acquired or fabricated on fixed-price contracts by incorporation of the special tooling clause (FAR 52.245-17) in the contract. This special tooling is often referred to as right-to-title special tooling. It is recognized that the Government has a vested interest in this tooling and may acquire title to the tooling at a later date to maintain production, support, or spare parts capability for a program. Normally, the Government should avoid taking title to this right-to-title special tooling if it is no longer required by the accountable contract and the Government has not identified a firm or probable requirement for the special tooling. If the Government takes title to this special tooling, it will generally increase the Government's liability and administrative burden associated with Government ownership.

c. Special tooling may also be acquired or manufactured by a contractor for the performance of a fixed-price contract that does not contain the special tooling clause and does not specify that special tooling is to be acquired for the Government. When this occurs, the Government has no rights to the tooling.

d. Production Special Tooling. In these cases, special contract provisions may provide the Government the option to take title to production special tooling acquired by the contractor. The PA shall follow the directions in the special clause on title and control.

5. Facilities. Facilities may be either Government-furnished or contractor-acquired. The facilities contract clauses, FAR 52.245-7, -10, and -11 set forth the title provisions. Facilities may also be acquired on contracts other than facilities contracts. In this instance, the title provisions in the Government property clause included in that instant contract will prevail.

## E. LIABILITY FOR LOSS, DAMAGE, OR DESTRUCTION OF GOVERNMENT PROPERTY



1. Scope. This section provides policy and guidance to the PA, and other Government and contractor personnel regarding loss, damage, or destruction (LDD) of Government property provided to contractors.

2. General. Definitions:

a. “Lack of Good Faith. ” Failure to honestly carry out a duty including gross neglect or disregard of the terms of the Government property clause or of appropriate directions from the PA. Examples are a failure to establish and maintain proper training and supervision of employees, or failure to apply adequate controls to ensure compliance with contract terms.

b. “Willful Misconduct. ” Includes either a deliberate act or failure to act that causes or results in loss, damage, or destruction to Government property.

c. “Managerial Personnel. ” Includes the contractor’s directors, officers, and any of the contractor’s managers, superintendents, or equivalent representatives who have supervision or direction of

(1) All or substantially all of the contractor’s business.

(2) All or substantially all of the contractor’s operation at any one plant or separate location at which the contract is being performed, or (3) A separate and complete major industrial operation connected with performing this contract. This usually refers to the top person in charge of a plant location and is normally the chief executive officer or a vice president or general manager.

3. Policy. DoD policy generally provides for the Government to act as a self insurer of Government property provided under certain contractual arrangements. This is largely due to DoD studies that have concluded it is more economical for the Government to be a self insurer than to allow a contractor to purchase insurance as an allowable cost (direct or indirect) under a contract. The studies estimated the extent of cost savings to the Government by comparing the cost of a commercial insurance policy to the amount of property losses plus the cost of employing Industrial Property Management Specialists (IPMSs). This means that one of the PA’s roles is to represent the Government’s interests as a self insurer by determining, through surveillance of the contractor’s property control system, whether the contractor is an acceptable insurance risk. However, there are certain situations in which the Government is not a self insurer. An example of this would be under fixed price contracts awarded through full and open competition (See FAR 52.245-2(g)). In such cases, the contractor is liable for all LDD of Government property with the exceptions of reasonable wear and tear to Government property or for Government property properly consumed in performing the contract.

4. Contractor Reauirements.

a. FAR 45.504 requires the contractor to promptly investigate and report all cases of loss, damage, or destruction of Government property to the PA. The PA shall assure that the contractor's procedures and property control system provide for:

(1) Internal reporting of any LDD to the responsible contractor property control organization.

(2) Investigation of such LDD in accordance with the Government property clauses and FAR 45.504.

(3) Prompt reporting by the responsible contractor organization to the PA, in accordance with FAR 45.504(b) and FAR 45.508-2.

(4) Additional reporting may be imposed by specific agency requirements for other types of property, including precious metals, explosives, firearms, hazardous materials, controlled substances, etc.

b. The following information should be requested from the contractor, where applicable, for each case of LDD of Government property:

(1) Date of incident.

(2) Description of property including National Stock Number or applicable Part Number or Identification number.

(3) Contract number.

(4) Acquisition cost.

(5) Full narrative of the incident, location, etc.

(6) Cause and corrective action taken or to be taken to prevent recurrence.

(7) Estimated scrap proceeds (when applicable).

(8) Repair direct labor and material costs (when applicable).

(9) Estimated cost to replace (when applicable).

(10) Copies of supporting documentation.

(11) The contract provision under which relief of responsibility is sought.

(12) Date of report.

(13) Statement that no insurance costs or other means of covering LDD of Government property were charged to the contract, if applicable.

(14) Statement that, in the event the contractor was or will be reimbursed or compensated for LDD of Government property; e.g., reimbursement by a subcontractor, the Government shall receive equitable reimbursement.

## 5. PA Requirements

a. Investigation. It is the PA's responsibility to investigate the circumstances of LDD of Government property and review the risk of loss and other contract provisions to determine which party assumes the risk of loss. When the Government assumes the risk of loss, investigations, in some circumstances, may be limited to verifying whether the contractor's report of LDD is accurate. Extensive investigations should only be performed when dollar amounts, nature of the property, and circumstances of the incident warrant it. The assistance of other CAO technical personnel should be requested when appropriate. Where the PA's investigation reveals that the loss or damage was caused by deficiencies in the contractor's property control system, the PA will ensure that:

- (1) The deficiencies are well documented.
- (2) The contractor is notified of the deficiencies.
- (3) Appropriate corrective actions are implemented.

If the contractor fails to correct deficiencies in its property control system within a reasonable period of time, the PA must then advise the CO to initiate action under FAR 45. 104(C).

b. Records. Each PA shall maintain LDD records that include, as a minimum, the following:

- (1) A log or register of all events of LDD.
- (2) A copy of the contractor's loss report.
- (3) PA investigative report that summarizes the circumstances, causal factors, trends, contract provisions, and recommendation.
- (4) Final resolution.



## 6. Determining Contractor Liability

a. Full Risk-of-Loss Provision. This provision is contained in the FAR 52.245-2 Government Property Clause. It specifies that the contractor is liable for any loss of or damage to Government property provided under the contract except for reasonable wear and tear or for consumption in performing the contract.

b. Limited Risk-of-Loss Provision. This provision is contained in the FAR 52.245-2 (ALT I), 52.245-5 Government Property Clauses and the Liability for Facilities Clause, 52.245-8. One of the circumstances for which the contractor is liable for loss of or damage to Government property is if it is the result of “willful misconduct” or “lack of good faith” on the part of contractor “managerial personnel.” Additional circumstances for which the contractor is liable for loss of or damage to Government property would be if it is the result of a risk required to be insured, or a risk that was in fact insured, or where the contractor was responsible under another contract clause. It is important to note that this provision also specifies that when a contractor has failed to establish and maintain an acceptable system for the management of Government property in accordance with the above clauses, and has been notified by certified mail of withdrawal of system approval by the CO, it shall be conclusively presumed that such failure was due to “willful misconduct” or “lack of good faith” on the part of contractor “managerial personnel.” Under an approved property control system, the burden of proof rests with the Government to prove that the LDD of Government property resulted from willful misconduct or lack of good faith on the part of the contractor’s top level managerial personnel. However, under a property management system in which approval has been withdrawn, the burden of proof shifts to the contractor who must prove that the LDD of Government property was not connected with any deficiency that caused withdrawal of system approval, or that the loss occurred before withdrawal of system approval. Similarly, under a property management system in which approval has been withheld due to deficiencies discovered in the initial evaluation, the burden of proof rests with the contractor to prove that the LDD of Government property was not connected with any deficiency that caused initial approval of the property control system to be withheld.

c. Risk of Loss Assumed by the Government. If authorized through the PA’s Certificate of Appointment the PA may take direct action as described below if the Government has assumed the risk of loss. The contractor must identify the circumstances” that led to the incident, and the provisions under the contract through which risk of loss was assumed. If the PA determines that the LDD of Government property constitute risks assumed by the Government, the PA shall notify the contractor in ‘writing, that the risk of loss is the responsibility of the Government. A copy of the documentation and notification to the contractor shall be retained in the Contract Property Control Data File for the contract. An informational copy shall be provided to the CO-. Additional reporting may be prescribed by agencies.

d. Recommending Liability. If the PA concludes that the contractor should be

liable, a fully documented and detailed case file including the PA's recommendation will be forwarded to the CO for review and determination. The file shall contain the following:

- (1) A statement of facts as supported by the investigation.
- (2) Recommendations as to the contractor's liability and the amount thereof.
- (3) Recommendations as to actions to be taken with regard to third party liability, if appropriate.
- (4) Requirements for disposition, repair, replacement of the damaged property.
- (5) Other pertinent comments.

A copy of the CO's determination shall be furnished to the contractor, to the PA, and a copy shall be retained in the files of the CO. The PA's copy shall be filed in the Contract - Property Control Data File for the contract when all pertinent actions, such as compensation to the Government or repair or replacement of the property, have been completed. In the event that the contractor acknowledges liability, the PA will notify the CO in writing requesting a decision as to course of action required for equitable settlement.

e. Quantification of Liability. When the contractor is liable for LDD of Government property, the PA is responsible for providing the CO a recommended amount for which the contractor should be held liable. Historically, the maximum amount that the Government could recover was the asset's original acquisition cost. Generally, the Government can recover the market value of the item. However, depending on the circumstances replacement value or value to the Government may be recovered. In a case where the PA determines that the lost, damaged, or destroyed item would have had no reasonable prospect of continued use by the Government, the contractor would only be liable for the sales or scrap value the Government would have received if the item had been properly processed through plant clearance.

f. Special Contract Provisions. The contracting officer may insert nonstandard risk-of-loss provisions in the contract where the Government does not assume the risk of loss for Government property provided under the contract. Therefore, nonstandard risk-of-loss provisions shall be thoroughly reviewed by the PA before a determination of liability is made by the CO. In such cases, the CO should obtain legal assistance before determining liability. -

## F. OTHER CONTRACTUAL ACTIONS

1.- In addition to the nonacceptance or disapproval of the contractor's property control system, the PA may recommend to the CO the following:

a. Suspension or Reduction of Progress Payments under Fixed-Price Contracts. If deficiencies affecting Government property identified by the PA have a known or perceived impact on fixed-price contract performance, the PA shall report the condition to the CO for possible reduction of progress payments, if appropriate.

b. Disallowance or Suspension of Reimbursement of Costs Under Cost Type Contracts. When the PA believes there may be grounds for disallowance of costs under cost type contracts, the PA's recommendation and supporting documentation to suspend reimbursement or disallow costs on the contracts shall be forwarded to the CO for a decision.

c. Award Fee Determinations. The criteria in the contract for determining the amount of award fee is sufficiently flexible so that unsatisfactory conditions in the contractor's property control system may be a factor for reducing the amount of the award fee. The PA may take the following steps affecting the amount of award fee: —

(1) Prepare and document the proposed action, including brief descriptions of each action previously taken to resolve problem areas.

(2) Forward the proposed action to the CO for incorporation into their recommendations to the Award Review Board.

## G. CLOSE OUT OF PROPERTY ADMINISTRATION

### 1. Final Review and Closing of Contracts for Property Administration.

a. When informed that disposition of Government property under a contract has been completed, the PA shall perform a final review which shall determine whether:

(1) Disposition of Government property has been properly accomplished and documented.

(2) Adjustment documents, including request of the contractor for relief from responsibility, have been processed and completed.

(3) Proceeds from disposals or other property transactions, including adjustments, have been properly credited to the contract or paid to the Government as directed by the contracting officer.

(4) All questions regarding title to property fabricated or acquired under the contract have been resolved and appropriately documented.

(5) The close out DD Form 1662, "DoD Property in the Custody of

Contractors, ” or comparable document prescribed for non-DoD agencies (e. g., NASA 101 8), has been prepared and submitted to the PA.

(6) The Contract Property Control Data File is complete and ready for closure.

b. When final review pursuant to paragraph G. 1.a., above, reveals that property related actions for contracts are complete, the PA shall sign or process a “Contract Administration Completion Record” (DD Form 1593), or automated equivalent, and attest that:

(1) All Government property provided under the contract has been properly accounted for.

(2) There are no unresolved questions related to contractor liability—for Government property and/or title to property acquired or fabricated under the terms of the contract.

(3) The PA has accomplished all pertinent duties and responsibilities as required by the FAR, the contract, and this manual.

c. The completed DD Form 1593 or automated equivalent shall be provided to the CO and the Property Summary Data Record shall be so annotated.

## 2. PA Interface with Other Contract Administration Personnel During Contract Closure.

a. The PA shall interface with the CO, and other technical personnel, as required, during contract closure to assure that all Government property accountable to the contract is promptly transferred to other contracts or otherwise disposed of.

b. Closure of property records is required before final contract closeout and may be completed significantly before contract closeout.

3. Premature Closeout of Contracts. The PA shall take action to have any prematurely closed contract reopened by the cognizant CO. When this is impractical, a suspense file shall be maintained for that contract by the PA to ensure that all property is properly disposed of without creating an undue risk to the Government.